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Claims By Tort Claimants Against Municipal Insurer Over Coverage for Sexual Abuse Dismissed By Federal Court.

Typically, a claimant has no direct right of action against an insurance company especially prior to a judgment against the insured. Even more typically, a claimant has no right to "cut-through" to the reinsurers based on an alter ego or fronting claim when the claimant is not the insured and is not in contractual privity. Nevertheless, that doesn't stop claimants from trying. In a recent case, a federal court rejected that attempt based on a lack of subject matter jurisdiction.

In *Bridges v. Poe*, No. 7:19-cv-00529-LSC, 2020 U.S. Dist. LEXIS 11240 (N.D. Ala. Jan. 23, 2020), a series of individual plaintiffs sued similar defendants for allegations of systemic sexual harassment, abuse and rape of female pretrial detainees at a city jail. After the first case was filed, the city's insurance company filed a state court declaratory judgment action seeking a declaration that it had no duty to defend or indemnify the city or its employees in the case. Subsequent cases filed by other plaintiffs in federal court named the insurance carrier as a defendant.

Each plaintiff alleged that the insurer was a shell corporation with no real employees, was merely the alter ego for a state municipality organization and a fronting company for the insurer's reinsurers. Plaintiffs, in the federal court actions, sought declarations that the insurance company had a duty to defend and indemnify the city defendants in the cases and that each plaintiff was an assignee of the insurance company's rights under its reinsurance contracts allowing plaintiffs to recover any judgment based on a cut-through to the reinsurers.

The insurance company moved in each of the federal cases to dismiss the claims against it for lack of subject matter jurisdiction. The plaintiffs argued that the court could retain the cases under supplemental jurisdiction. The district court granted the insurance company's motions to dismiss.

In granting the motion to dismiss, the court noted that the claims against the insurance company were state law claims between citizens of the same state. Thus, the analysis came down to whether supplemental jurisdiction was appropriate. Given that the claims against the insurance company were about insurance coverage, separate and distinct from the underlying tort claims, the court said that the exercise of supplemental jurisdiction "may not be appropriate." The court found that the claims against the insurance company alleging alter ego, fronting and as an assignee on a cut-through basis were not typical tort claims, were complex and hinged on whether the insurer was a shell corporation and a mere front for reinsurers. These allegations implicated matters of local law and policy. Because resolving these issues would cause the court to unnecessarily make decisions of state law, the court concluded that the state court would be better suited to hear and resolve those novel and complex state law claims.

The court also determined that it was not even clear that the plaintiffs had Article III standing to sue the insurance company for a declaration of coverage before the entry of judgment against the insured. Dismissing the claims, said the court, promoted judicial economy by avoiding substantial duplication of effort where there as a state case already pending.

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